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ONE SHOW NIGHTLY 7:45 O'CLOCK

## WORKMEN'S COMPENSATION LAW

### DIGEST OF BILL WHICH CHAMBER OF COMMERCE MEMBERS ARE URGED TO DISCUSS AT MEETING CALLED FOR 2 O'CLOCK TOMORROW (WEDNESDAY) AFTERNOON

Digest of Senate Bill No. 2—"Castle Bill," "Workmen's Compensation," to be considered by members of the Chamber of Commerce of Honolulu, Wednesday, March 3, at 2 p. m. This is a workmen's compensation bill of the direct, exclusive and compulsory type. It is practically a copy of the draft recommended for adoption by the Conference of Commissioners on Uniform State Laws.

**Scope of Act.** Under this bill employers are obliged to make compensation for all injuries received by their employees in the course of the employment according to a definite schedule. All public employments and all private employments carried on for pecuniary gain are covered except where the employment is casual and where the remuneration exceeds \$..... a year. Domestic service and employment by charitable organizations are also excluded.

**Defenses Abolished.** The common law defenses of assumption of risk, contributory negligence and the fellow servant rule are abolished, the only cases where compensation is not allowed being for injuries caused (1) by an employee's wilful intention to injure himself or another or (2) by his intoxication.

**Remedies Exclusive.** The remedies given are exclusive of all existing remedies under the present law.

**Liability of Third Person.** If a third person is legally liable for the injury, the employee may claim the benefit of the act or may proceed against the third party, but he cannot do both. If the employer makes compensation, he becomes subrogated to the right of action against the third party, but any damages recovered in excess of the compensation paid is to be paid over to the employee less expenses and costs.

**Contracting Out Forbidden.** No contract or device will relieve the employer from the liability created by the Act.

**Compensation and Dependents.** Both the amounts and periods of compensation are left blank in the bill.

**Compensation is to be made as follows:**

**Cases of Death.** When death occurs within ..... years after the injury, the following percentages of the average weekly wages are to be paid for the following periods:

1. Dependent widow, if there are no dependent children, .....% until death, or remarriage, but not to exceed ..... weeks; if there are one or two dependent children .....%; and if there are three or more dependent children .....%.

2. Dependent widow, if there are no dependent children .....% until remarriage, or during disability, but not to exceed ..... weeks; if there are one or two dependent children .....%; and if there are three or more dependent children .....%.

3. If there is no dependent widow or widow, but dependent children, then to such child or children .....% increasing by an additional .....% for each such child in excess of two with a maximum of .....% until the child becomes ..... years of age, or if incapable of self support and unmarried while incapable but in no case to exceed ..... weeks after said age of ..... years.

4. If there are none of the foregoing dependents, then to the parent or parents .....% if wholly dependent and .....% if partially dependent, to be divided, if both parents are dependent, and for a period of not to exceed ..... weeks.

5. If there are no dependent parents, then a like amount to dependent grandparents in the same manner.

6. If there are none of the foregoing dependents then to a dependent grandchild, brother or sister, or two or more of them, .....% for one such dependent increasing by .....% for each such additional dependent with a maximum of .....%.

These "dependents" as the term is used are to be so considered under the table of self support and unmarried, whether actually dependent or not.

If a child under ..... years, or if incapable of self support and unmarried, whether actually dependent or not.

A widow only if living with the deceased, or actually dependent in whole or in part upon him.

A widower only if incapable of self support and actually dependent in whole or in part.

A parent or grandparent only if actually dependent in whole or in part.

A grandchild, brother or sister only if under ..... years of age, or incapable of self support, and wholly dependent.

The relation of dependency must exist at the time of injury.

A section explicitly defining each of the words child, brother, sister, parent, grandparent and grandchild appears.

In computing death benefits the average weekly wages are not to be considered as exceeding \$..... nor less than \$....., but in no case shall they exceed the average as determined in the manner best calculated to give the average weekly earnings during the twelve months preceding the injury, or where, because the term of employment has been too short or for any other cause cannot practically be done then the average weekly earnings of a person similarly employed during the twelve months preceding the injury.

If death occurs after a period of total or partial disability the amounts paid by way of compensation for such disability are to be deducted from the death benefit.

**Medical Attendance.** During the first ..... days of a disability the employee must furnish

Notice of private insurance must be given the Territorial Insurance Manager with a copy of the policy.

Notice must be posted by each employer in his place of business stating the fact that he has furnished proper security.

A failure to comply with the provisions as to security is penalized in the amount of \$1.00 per day per employee to be paid into the Territorial Insurance Fund, and if a default continues for more than thirty days an injunction against continuing business may be issued.

Every insurance policy shall contain a provision permitting an employee to recover directly from the insurance carrier, a provision that notice to or knowledge of the employer shall be deemed notice to or knowledge of the carrier, and a provision that bankruptcy of the employer shall not relieve the carrier.

No policy can be cancelled until at least ten days' notice has been given the Territorial Insurance Manager and the employer.

The Territory or any political subdivision may insure either with the Territorial Insurance Manager or with private companies.

No agreement by employees to contribute to the cost of insurance shall be valid.

**Territorial Insurance Fund.**

A Territorial Insurance Fund is created, consisting of premiums and penalties paid under the Act. Such fund is to be managed by the Territorial Treasurer as Insurance Manager and used to pay losses.

The Territorial Insurance Manager is authorized to do everything necessary to properly handle the fund; to sue and to sued; to fix rates; make insurance contracts; employ assistants, actuaries, etc. He shall not be held personally liable for any official acts. He may delegate his powers to deputies, including the power to make insurance contracts, etc. He shall give such additional bond as the governor may fix; and may deposit the fund in the same manner that other public money may be deposited.

Ten per cent of the premiums shall be set aside to create a surplus fund until such surplus shall amount to \$....., and thereafter five per cent shall be set aside until such surplus is sufficient in the opinion of the Territorial Insurance Manager. A reserve fund is also to be created. These funds may be invested in the same securities authorized by savings banks. Securities so held may be sold with the consent of the Territorial Auditor and the proceeds returned to the fund.

The administration expenses shall at first be paid out of moneys appropriated for the purposes, to be later reimbursed out of the funds collected.

Employments are to be classified, hazards determined and rates fixed, the latter to be based on the total payroll and number of employees in each class of employment and to be made as low as possible.

Proper accounts are required by classes of employments, etc.

At the end of every year and often if deemed wise, rates may be re-adjusted, and any balance at any time remaining to the credit of any class may, in the discretion of the Insurance Manager, be credited to the individual members of such class.

If premiums are found to have been too small, assessments may be levied and when based on estimated payroll the amounts may be adjusted to conform to the fact.

Policies are to be issued in the form approved by the Insurance Manager; premiums are to be paid semi-annually. Defaults in payments may be made the basis of civil actions, and if continued for ten days shall subject the employer to a penalty of \$1.00 per day per employee during the period of default.

An employer not in arrears may withdraw from the fund on thirty days' written notice, but will remain liable for assessments for liabilities for compensation accruing prior to withdrawal unless he commutes this liability by a cash payment satisfactory to the Insurance Manager.

Reinsurance may be obtained if the Insurance Manager desires.

The pay rolls of employers insuring in the Territorial Fund shall be subject to audit, and any falsification renders the employer liable to a penalty of ten times the amount of the difference between what was paid and what should have been paid.

Any false statement or wilful misrepresentation made in order to obtain insurance is made a misdemeanor and subject to fine.

The plants and establishments of employers insuring with the Territory are subject to inspection, but no information so obtained or in anywise obtained under the act is to be made public.

Disbursements for losses are to be made with the approval of the Territorial Auditor.

**Records of Injuries.**

A record must be kept of all injuries and reports made within forty-eight hours after injury of all injuries causing absence from work for one day or more to the Accident Board. When disability terminates that fact is to be reported. If disability continues for sixty days that fact also is to be reported. Failure to so report is punishable by fine of not more than \$.....

**Interstate Commerce.** The act is to apply to employers engaged in interstate or foreign commerce only as far as permissible under the Federal Laws.

**Reports of Boards.**

Annual reports are to be made by each Board to the Legislature.

**Constitutionality.** Provision is made that if any part of the Act is held unconstitutional or invalid, this shall not affect the validity of the act as a whole or of any part which can be given effect.

6101-11



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